Teckwal Corp. and E.M. Andrews Sales, Inc. *and* Chauffeurs, Teamsters, Warehousemen and Helpers, Local Union No. 301, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America. Case 13-CA-19074

August 31, 1982

SUPPLEMENTAL DECISION AND ORDER

BY MEMBERS FANNING, JENKINS, AND HUNTER

On November 3, 1980, the National Labor Relations Board issued a Decision and Order in Case 13-CA-19074[1] in which, *inter alia*, the Board ordered Respondent Teckwal Corp. (Teckwal) to make its employees whole for any loss of pay or other employment benefits they may have suffered by reason of its various unfair labor practices. On June 30, 1981, the United States Court of Appeals for the Seventh Circuit entered a consent judgment enforcing in full backpay provisions of the Board's Order.

A controversy having arisen over the amount of backpay due under the terms of the Board's Order, the Regional Director for Region 13, on November 30, 1981, issued a backpay specification and notice of hearing alleging, *inter alia*, at paragraph 3 thereof that Teckwal Corp. and E.M. Andrews Sales, Inc. (Andrews Sales), at all material times herein "have been affiliated business enterprises with common officers, ownership, directors, management, and supervision; have formulated and administered a common labor policy affecting employees of said operations; have shared common premises and facilities; have provided services for and made sales to each other; have interchanged personnel with each other; and have held themselves out to the public as a single integrated business enterprise." The specification also alleged at paragraph 4 that, by virtue of their status as referred to above, Teckwal and Andrews Sales were jointly and severally liable for the monetary liability imposed by the Board's Order. The specification then alleged specific amounts of backpay due under the Board's Order and the method of computing that backpay.

On January 21, 1982, Teckwal and Andrews Sales (Respondents) filed a response to the backpay specification and notice of hearing in which Respondents admitted the amounts of backpay due under the Order and the propriety of the method of computation of backpay. Respondents also admitted paragraph 3 of the specification which, as noted, alleged that Respondents at all times material have been a single integrated business enterprise. However, Respondents denied that Andrews Sales was liable for any of the moneys due under the Board's Order since Respondents contended that the Board's Order did not apply to Andrews Sales.

Thereafter, on April 16, 1982, counsel for the General Counsel filed directly with the Board a motion to transfer proceedings to the Board and Motion for Summary Judgment with exhibits attached. In the motion, the General Counsel asserted that, notwithstanding their denial of liability on the part of Andrews Sales, Respondents had nonetheless admitted the fact that they held themselves out to the public as a single integrated business enterprise. The General Counsel asserted that Respondents are therefore a single employer and, consequently, Andrews Sales is Teckwal's *alter ego*. Further, the General Counsel contended that although Andrews Sales was not named as a party in *Teckwal, supra*, it is established that derivative liability for backpay may be imposed upon a party to a supplemental proceeding, even though the party was not named in the earlier proceeding in which the unfair labor practices were found, if that party is closely and sufficiently related to the party which committed the unfair labor practices. The General Counsel stated that, by definition, an *alter ego* in a supplemental proceeding shares with the named party in the original proceeding an obligation to provide backpay upon proper proof of the *alter ego* relationship. And, as Respondents had admitted that they were *alter egos* and also had admitted the various backpay computations, the General Counsel urged that there were no issues which needed to be litigated and that, pursuant to Section 102.54(b) of the Board's Rules and Regulations, the General Counsel was entitled, as a matter of law, to a summary judgment that Respondents were jointly and severally liable for the backpay amounts set forth in the specification.

Subsequently, on April 27, 1982, the Board issued an order transferring the proceeding to the Board and a Notice To Show Cause why the General Counsel's Motion for Summary Judgment should not be granted. On May 11, 1982, Respondents filed their reply to the motion to transfer. They also filed at the same time a motion for leave to amend their answer, and they included an amended answer to the backpay specification and notice of hearing. In their amended answer, Respondents now deny that Teckwal and Andrews Sales are a single employer, and, tracking the language of paragraph 3 of the specification, they now claim, without elaboration, "that there is no common management or supervision, no formula-

[1] *Teckwal Corp.*, 253 NLRB 187.

tion or administration of any common labor policy affecting employees of the said two corporations, no functional interrelationship, no common products, no interchange of personnel, and at no time have the parties held themselves out as a single integrated business enterprise." Respondents therefore deny that they are jointly and severally liable for the backpay due, and they assert that Andrews Sales was at no time a party to the "initial complaint proceedings" brought against Teckwal, and has never had the opportunity to respond to the unfair labor practice allegations. Accordingly, Respondents seek to have the matter set for hearing. In support of their motion to amend their answer, Respondents cite Section 102.57 of the Board's Rules and Regulations which states in part that:

> After the issuance of the notice of hearing, but prior to the opening thereof, the regional director may amend the backpay specification and the respondent affected thereby may amend his answer thereto. . . .

Subsequently, on May 21, 1982, the General Counsel filed an opposition to Respondents' motion to amend their answer. The General Counsel notes that in their original answer Respondents admitted all facts and computations set out in the specification but denied only the conclusionary allegations that, as a matter of law, they were jointly and severally liable for the amounts set out in the backpay specification. The General Counsel contends that, notwithstanding that original answer, Respondents now seek to deny selectively certain facts which they have previously admitted and, without any explanation, now seek to deny that they are a single employer in order to avoid joint and several liability. The General Counsel argues that Respondents should be held to the responses in their original answer and that summary judgment should be granted in his favor based on that answer.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Upon the entire record in this proceeding, the Board makes the following:

Ruling on the Motion for Summary Judgment

Section 102.54(b) of the National Labor Relations Board Rules and Regulations, Series 8, as amended, states:

> (b) *Contents of the answer to specification.*—The answer to the specification shall be in writing, the original being signed and sworn to by the respondent or by a duly authorized agent with appropriate power of attorney affixed, and shall contain the post office address of the respondent. The respondent shall specifically admit, deny, or explain each and every allegation of the specification, unless the respondent is without knowledge, in which case the respondent shall so state, such statement operating as a denial. Denials shall fairly meet the substance of the allegations of the specification denied. When a respondent intends to deny only a part of an allegation, the respondent shall specify so much of it as is true and shall deny only the remainder. As to all matters within the knowledge of the respondent, including but not limited to the various factors entering the computation of gross backpay, a general denial shall not suffice. As to such matters, if the respondent disputes either the accuracy of the figures in the specification or the premises on which they are based, he shall specifically state the basis for his disagreement, setting forth in detail his position as to the applicable premises and furnishing the appropriate supporting figures.
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> (c) *Effect of failure to answer or to plead specifically and in detail to the specification.*—If the respondent fails to file any answer to the specification within the time prescribed by this section, the Board may, either with or without taking evidence in support of the allegations of the specification and without notice to the respondent, find the specification to be true and enter such order as may be appropriate. If the respondent files an answer to the specification but fails to deny any allegation of the specification in the manner required by subsection (b) of this section, and the failure so to deny is not adequately explained, such allegation shall be deemed to be admitted to be true, and may be so found by the Board without the taking of evidence supporting such allegation, and the respondent shall be precluded from introducing any evidence controverting said allegation.

In their answer to the backpay specification, Respondents expressly admitted the allegations in paragraph 3 of the specification. Those allegations clearly established that Respondents have at all times material operated as a single employer.[2] Accordingly, it is clear that Respondents in their original answer admitted their single employer status. It is also clear that their sole opposition to the backpay specification at that time was its inclusion of Andrews Sales as liable for any moneys due and that the opposition to such inclusion was based only on the contention that the Board's original

[2] *Crawford Door Sales Company, Inc.*, 226 NLRB 1144 (1976).

Order did not apply to Andrews Sales. However, it is well established that derivative liability may be imposed upon a party to a supplemental proceeding even if that party had not been a party to the underlying unfair labor practice proceeding if it is "sufficiently closely related" to the party which was found in the original proceeding to have committed the unfair labor practices.[3] Respondents, having initially admitted their status as a single integrated business enterprise, would clearly be "sufficiently closely related," and derivative liability would attach. Respondents' original answer effectively admitted that Andrews Sales is the *alter ego* of Teckwal. As such, Andrews Sales shares an obligation with Teckwal, the named party in the original unfair labor practice proceeding, to provide backpay.[4]

However, in their amended answer, filed only after the General Counsel's Motion for Summary Judgment, Respondents now seek to deny their status as a single employer. Respondents offer no reason for this change of position on a critical issue in this proceeding. We think that the import of Section 102.54(b) and (c) of the Board's Rules required more from Respondents than this complete change in position without explanation or supporting affidavits. Inasmuch as Respondents presumably have knowledge as to why they now deny an alleged business relationship which they previously admitted, the foregoing-mentioned sections of the Board's Rules and Regulations require that Respondent's motion to amend their answer should have been supported by a specific explanation of their actual business relationship, and why they otherwise would not be jointly and severally liable. To the extent they now deny that any business relationship exists, Respondents should have explained why they initially admitted each and every indicia of single employer status which was alleged at paragraph 3 of the specification.[5] In sum, we find that, absent a supporting explanation from Respondents, the General Counsel's single employer allegation as set forth in paragraph 3 of the backpay specification should be deemed admitted, and that Respondents are precluded from amending their answer in that respect.

In sum, as the Motion for Summary Judgment alleges, the answer filed by Respondents admits their status as a single integrated business enterprise, and Respondents' affirmative defense that the Board's Order and court's judgment do not apply to Andrews Sales is contrary to established Board precedent.[6] Accordingly, we shall grant the General Counsel's Motion for Summary Judgment.[7]

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondents, Teckwal Corp. and E.M. Andrews Sales, Inc., Gilmer, Illinois, their officers, agents, successors, and assigns, shall make whole the discriminatees named below by paying them the amounts set forth adjacent to their names, plus interest to be computed in the manner specified in *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962), and *Florida Steel Corporation*, 231 NLRB 651 (1977),[8] less any tax withholdings as required by Federal and state laws. The amounts ordered to be paid the several discriminatees are as follows:

Mitchell Neilsen	$1,258.54
David Skinner	961.18
Earl Williams	4,808.41

Respondents shall also make payment to the Health and Welfare Fund and the Pension Fund of Chauffeurs, Teamsters, Warehousemen and Helpers, Local Union No. 301 affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America in the amounts set forth below:

Health and Welfare Fund	$6,480.00
Pension Fund	7,080.00

[3] *Coast Delivery Service, Inc.*, 198 NLRB 1026, 1027 (1972), and cases cited therein.

[4] *Southeastern Envelope Co., Inc. & Southeastern Expandvelope, Inc., (Diversified Assembly, Inc.)*, 246 NLRB 423 (1979).

[5] In their motion to amend their answer, Respondents indicate that they denied the allegations at par. 3. In this, they are clearly in error since their answer stated: "Respondents admit the allegations of paragraph 3." Moreover, Respondents argue in their motion to amend their answer that they deemed "the conclusions set forth in said Backpay Specification were insufficient in themselves to support the findings of an *alter ego* or single employer relationship, and believe the evidence will so show, and in that manner so responded." Again, Respondents are in error for the allegations they admitted clearly established single employer status (see fn. 2, *supra*).

We note too that while Respondents filed their motion to amend their answer pursuant to Sec. 102.57 of our Rules, that section is inapplicable here. See *Standard Materials, Inc.*, 252 NLRB 679 (1980). Further, while the Board permitted a respondent to amend its answer to a backpay specification in that case, we deem the facts inapposite to those present here. There the Board permitted the amendment of an answer which initially had not been sworn to and which did not contain respondent's address. A later response from the respondent was sworn to and did contain respondent's address and the Board accepted that response as an amended answer. But the errors in that respondent's original answer were minor, and may well have been inadvertent. Here, there is no showing the admissions in Respondents' answer were inadvertent. They clearly were not minor. While we are mindful that our Rules and Regulations are to be liberally construed, we are not satisfied that Respondents have presented us with a valid reason for permitting the amendment of their answer.

[6] *Coast Delivery Service, Inc., supra; Southeastern Envelope Co., supra.*

[7] We likewise deny Respondents' motion to amend their answer.

[8] Member Jenkins would award interest on the backpay due in accordance with his partial dissent in *Olympic Medical Corporation*, 250 NLRB 146 (1980).